

**TESTIMONY OF LAWTON ROBERTS  
AUTHOR OF THE BOOK "UNFAIR AT ANY FARE"  
AND OWNER OF UNIGLOBE COUNTRY PLACE TRAVEL  
IN LAWRENCEVILLE, (ATLANTA), GEORGIA  
BEFORE  
THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
MARCH 11, 1999**

Good morning Mr. Chairman and Members of the Committee. I am deeply grateful for this extreme privilege and opportunity to appear before you at this important hearing to consider the merits of the "Airline Passenger Fairness Act". I request that copies of my expanded written statement be included in the official record of this hearing.

As you know, this proposed legislation deals primarily with the manner in which the airlines of this nation treat their customers. In my brief comments this morning, I will address three points.

**First**, I will draw your attention to one of the types of unfair treatment of passengers that is addressed in the proposed legislation, the practice by the airlines of overselling flights and bumping passengers. I will present one well-documented example of this type of unfair treatment of consumers by the nation's airlines, in this case a family of six who were denied the right to travel on the flight for which they had purchased airline tickets months in advance, simply because the airline in this case continued to receive money from more passengers than the number of seats which existed on the airplane. In any other retail industry, this would be considered consumer fraud. I will also raise a serious question regarding the accuracy of DOT statistics concerning the number of involuntarily bumped passengers.

**Secondly**, I will paint for you a picture of a shell game the airlines are allowed by current federal regulation to play that often results in more passengers showing up at airport gates with tickets for specific flights than there are physical seats on the plane. The airline ticket marketplace is not an auction to the highest bidder. When Mr. Jones pays \$300 for an airline reservation on a specific flight, it is never with the understanding that if someone else comes along later and is willing to pay \$800 for that seat that it could result in Mr. Jones being denied the product which he originally purchased for \$300. In other retail industries, both state consumer protection laws and the Federal Trade Commission define such practices as consumer fraud. Not even automobile dealers in the much maligned automobile marketplace can get away with selling an automobile to buyer #1 and then selling the same automobile to buyer #2 for a higher price before buyer #1 has received delivery of the automobile that he originally had the contract to buy.

And **third**, I will explain why both the Congress and the U. S. Departments of Justice and Transportation need to work together to address the many ways in which the airlines conduct their business in the retail marketplace, often in an anti-competitive, anti-consumer, anti-distributor, punitive, predatory and even fraudulent way. I believe that once you get a clear picture of exactly what's going on out there in the airline marketplace, you will see the need to resume the deregulation of the airline industry, but this time with consumers and distributors in mind, including the dismantling of many practices put into place by the airlines that when lumped together amount to what has become a re-regulation of the airline industry not by the federal government but by the airlines themselves.

# **I. THE UNFAIR PRACTICE OF BUMPING PASSENGERS:**

(One example of what happens when consumers don't get what they pay for from the airlines, namely a seat on a specific flight in return for a ticket purchased on that flight)

Included as a part of my written statement for the record are copies of correspondence describing the details of a family of six who were involuntarily bumped from a Delta Air Lines flight on February 12, 1998 that they purchased tickets on in November, 1997. The Mortimer family's case is one that needs closer examination by this committee, mainly because of the red flags that appear throughout the incident that, if typical, would signal an urgent need to take swift action at the federal level to change or eliminate federal regulations that now protect the airlines more than consumers in this area of overselling of flights. I urge all committee members to read the correspondence regarding this incident. In particular, several alarming points are worth mentioning now:

1. Even though the Mortimer family was not late for gate check-in, a fact that can be substantiated by other passengers, they were reported by Delta as late arrivals to both myself and to an independent reporter from the Chicago Tribune. This is inconsistent with Delta's policy however of not permitting late arriving passengers to board a plane. Normally late arriving passengers would be denied boarding by Delta from the start. The Mortimers were allowed to board with seat assignments before they were advised on the plane by Delta personnel that they had to get off the plane since Delta had oversold the flight.
2. The Mortimer family was rebooked by Delta personnel in Atlanta on an American flight to Miami where they had to then connect with another American flight back to Orlando, which caused them to arrive at their original destination of Orlando airport approximately six hours later than their originally scheduled arrival time.
3. After writing a letter to the Department of Transportation about this incident, I was advised by telephone call on March 30, 1998 from Mr. Norman Strickman, then the head of the DOT's Consumer Protection Division, that Delta had reported the Mortimers to the Department of Transportation as volunteers in willingly giving up their seats to other paying passengers, and not as being involuntarily bumped at all.
4. After asking Mr. Strickman if the Department of Transportation routinely checks a sampling of bumped passengers to verify the data on bumped passengers, which originates from the airlines, and to simply get the consumers' side of the story from time to time, Mr. Strickman informed me that the DOT never checks or audits the reports from the airlines concerning either the number of passengers who are actually being bumped, or the accuracy of voluntarily versus involuntarily bumped passengers.

5. After asking Mr. Strickman about the nature of the Department of Transportation's involvement in dealing with formal consumer complaints submitted in writing by airline passengers, I was informed that the total involvement of the Consumer Protection Division of the DOT in dealing with actual consumer complaints was to simply forward the complaint directly to the airline about which the consumer was filing a complaint, and asking that airline to handle it by getting back with the consumer. No follow up by the DOT is ever performed. In the case of the Mortimer family, it so happened that a Delta Air Lines representative just happened to be in the DOT's offices at the time the DOT received my correspondence on behalf of the Mortimer family.
6. In this same telephone conversation with me on March 30, 1998, Mr. Strickman further informed me that following the various cuts in the federal budget, his staff was now down to just eight people, and that they were doing the best job that they could with the resources they presently had.

The incident involving the Mortimer family points out several weaknesses in the present method of complete centralized federal control of so-called consumer protection statutes. Just like centralization of marketplace controls didn't work in the Soviet Union, I believe they are not working for many of the same reasons of inefficiency and bureaucracy in our airline marketplace. Most consumers upon discovering they have no recourse in their local community or local judicial jurisdiction simply won't bother, especially upon learning they have to write someone in Washington, D. C. And if consumers ever learn that the only function of the DOT in processing consumer complaints is to simply record the number that are received and then forward them to the airline involved for responding to the consumer, I believe most consumers won't bother. There also is no follow up on whether or not consumers ever receive answers from airlines. But we're still talking about symptoms. What motivates the airlines to sell more tickets than there are seats on any given flight? And how do they carry out this modern version of the old shell game that prevents both consumers and distributors from knowing when tickets are being sold for which seats may not exist?

## **II. HOW THE AIRLINES GET AWAY WITH THE UNFAIR PRACTICE OF SELLING MORE TICKETS THAN THEY HAVE SEATS ON THE PLANE, AND WHY:**

Several factors contribute to the fact that many passengers today are in fact purchasing a form of lottery ticket rather than an airline ticket, especially low fare passengers or those who are not the most frequent flyers for the major airlines with some form of elite status. This causes dozens of passengers to arrive at the gate of major airlines every day with a purchased ticket with a reservation on a specific flight, but no specific seat assignment. This permits the airlines to play the following shell game with seat assignments:

1. The airlines withhold a percentage of seats on every flight for 'airport check-in only'. This percentage varies, but is usually up to 25% of all seats on a given flight. So the last 25% (or more) of all tickets purchased on a particular flight will be without specific seat assignment. It then becomes a game of first come, first served in arriving at the gate to hope you get one of the left over seat assignments. Otherwise, a passenger will be bumped. But is the problem only up to 25% of seats that aren't pre-assigned to specific passengers? No! It's much worse.
2. The airlines further withhold from advance assignment a much larger percentage of seats on most flights for possible use by their most elite frequent flyer members. This percentage can be well over 50% of the total seats on a given flight, depending upon the specific city-pair involved. A high business travel corridor such as Atlanta-Washington, D. C. would likely have a higher percentage of seats not available for advance assignment for this reason than a city-pair where there may be a higher percentage of leisure travelers flying on much cheaper tickets, such as Atlanta-Orlando. Therefore, if a flight that normally has 75% full fare business travelers suddenly has 50% low fare leisure travelers, this would result in a large number of passengers being sold tickets without seat assignments, and being subject to being bumped from the flight. But wait! Yet another factor has crept into the airline marketplace that further exacerbates this problem. And that is another unfair practice by the airlines.
3. Now the major airlines have begun the practice of guaranteeing their most frequent flyers a seat on any flight in their system, and here's the problem, even 'oversold flights'. The way that airlines can stand by this guarantee is by bumping lower fare passengers who did not already receive a specific seat assignment when they purchased their ticket.

The airlines will tell you all these practices are a part of a much larger strategy known as yield management. They will also tell you that by changing these practices, for example doing away with the practice of overselling flights, they will be forced to raise air fares for everyone. Well to that argument I simply say, it doesn't take a rocket scientist or an advanced degree in economics to conclude that if any business could sell a product or service, and then resell that same product to another purchaser for a higher price with little threat of recourse from the first purchaser, that business could and would profit to some degree from such an illicit practice. But Mr. Chairman and members of the Committee, that doesn't make it right. Surely there are higher even moral standards of fairness by which we sanction business practices in this country than just the impact to bottom line profits! If that were the main issue here, then you had better get ready for retailers in other industries eager to schedule hearings to consider similar practices in the automobile industry, or furniture industry, or any retail industry where someone might come along who is willing to pay more for an item than the person before them. Are we going to move away from the honored business practice where a deal is a deal, or are we going to continue to condone a practice where a ticket purchase is only a chance at a seat like a lottery ticket. I hope you would agree that this would create chaos not to mention ill will in other industries.

Well, that same chaos is occurring today, at our nations' airports, just prior to the boarding of each flight that is close to a sold out state. And this is because of a federal regulation, not deregulation, that legalizes the sale of more tickets by an airline than there are seats on each plane, and then limits the rights of consumers when it happens to them, while completely protecting and shielding through federal preemption the airlines from any serious consumer recourse. But Mr. Chairman, we're still talking about symptoms of a much larger problem. The unfair treatment of the Mortimer family and others like them who are bumped from planes every day is a symptom of a lack of competition. But even a lack of competition in hub cities is a symptom of an even larger problem, a lack of accountability on the part of the airlines to the consumers they exist to serve, which brings me to my last major point, and one in which I offer specific solutions that in time will deal with all of the aforementioned problems of unfair treatment of passengers as well as lack of competition.

### **III. FINISH DEREGULATION OF THE AIRLINE INDUSTRY:**

Mr. Chairman, we need to get the federal government out of the airline industry, except for safety issues, and other non-marketplace issues such as labor relations, environmental protection, etc. The airlines are in complete control of their marketplace, to the detriment of consumers and distributors alike. Thus questions of fair treatment of both consumers and distributors arise. However, fair treatment of consumers is not the main problem. But it is important to understand that the airlines' control of the marketplace comes from two sources; one the federal government through existing DOT regulations that protect the airlines more than consumers, and the other, the many practices, procedures and even tariffs that are designed, implemented and enforced solely by the airlines, often times in ways that are punitive, predatory, anticompetitive, deceptive and even fraudulent. The many different examples of unfair treatment of consumers that seem to increasingly get our attention are themselves only symptoms of a much larger problem, lack of competition. However, even lack of competition is not the root problem. The many different examples we could discuss of unfair treatment of consumers or evidences of lack of competition are both only symptoms of a much larger problem which can be more effectively dealt with through the elimination of regulations and controls that now exist, rather than the creation of new ones.

#### **A. REMOVE EXISTING FEDERAL REGULATIONS THAT PROTECT AIRLINES FROM CONSUMERS:**

Let the marketplace have a chance to help solve the problems of unfair treatment of passengers and distributors by removing the two iron curtains that now protect the airlines from consumers, namely federal preemption and U. S. Department of Transportation so-called consumer protection regulations. Rather than having a long list of limited rights that consumers should have if the airlines don't provide the services paid for by consumers, let's try the same fundamental principle that works so well in all other retail industries. Give consumers the basic right to expect the airline to deliver that which is purchased, and whenever the airline fails to deliver as promised, permit the consumer to exercise his or her basic right of holding the supplier accountable for the impact to the consumer of the airline's failure to deliver as contracted, including the use of local and state jurisdiction for due process of their claim. Mr. Chairman, I believe this one change which can be adopted quickly and easily would do more than any other step we could take to

level the playing field between airlines and consumers thus greatly reducing the overall problem of unfair treatment of both consumers and distributors.

## **B. ELIMINATE TARIFFS:**

If the airline industry was de-regulated twenty years ago, then why are we still permitting the airlines to enforce tariffs on their various air fares? A tariff is a rule created by the supplier defining guidelines on how a particular product or service can be used by the consumer. Tariffs are normally found only in regulated industries such as electric utilities, telecommunications etc.,. And normally in industries where tariffs do exist, a review board with consumer representation such as a Public Service Commission is required to review and approve all supplier tariffs prior to being implemented in the marketplace. But in the airline industry, the consumer review board, the Civil Aeronautics Board, no longer exists. Therefore, we have airlines completely regulating and controlling this part of the airline industry by serving as judge, jury and executioner in the design, implementation and enforcement of airline tariffs. This means that consumers can be punished for not using all segments of a round trip ticket, even if it was cheaper for them to purchase a round trip ticket when a one way ticket was all the consumer needed. This means that travel agents can and are punished for selling a round trip ticket to a customer who, either premeditated or not, winds up using only one portion of the ticket. Fines of hundreds of dollars per ticket have been known to be levied by airlines against travel agents. The solution is to make it illegal for airlines to implement and enforce air fare tariffs in an unregulated market, or else get the consumer and distributor back into the picture by giving them a voice in the matter.

## **C. DIRECT THE U. S. DEPARTMENT OF JUSTICE TO INVESTIGATE THE AIRLINE CARTEL THAT WE HAVE PERMITTED TO EVOLVE OVER THE PAST TWENTY YEARS, AND TO TAKE THE STEPS REQUIRED TO ENCOURAGE COMPETITION:**

It's time we all took a step back to see the bigger picture of what has happened to the airline industry in America. The root problem that is resulting in numerous Congressional hearings in both houses of Congress in the past twelve months to review various issues of passenger treatment or lack of competition in the airline industry isn't unfair treatment of consumers or even lack of competition. Both of these are symptoms of a much larger problem, a re-regulated airline industry that now exists with little concern for consumers or ticket distributors or small towns throughout America now without commercial airline service. The physical evidences of an illegally re-regulated airline industry can be found in:

1. Their carving up of America into a neat system of on-average three monopolistic hub cities for each major airline, cities where usually 80% of all originating traffic is controlled by one airline. In addition to becoming cash cows for the airlines because of their exorbitant air fares on city pairs including a hub city, other examples of the adverse impact of monopolistic hub city markets can be found in the recent strike at Northwest Airlines last year. Not only were major cities almost completely cut off from commercial airline service, but an entire state was suddenly without service as well. Entire cities and regions are held hostage to only one major airline in no less than the following examples:
  - a. Delta Air Lines in Atlanta, Cincinnati, and Salt Lake City.
  - b. Northwest Airlines in Detroit, Minneapolis and Memphis.
  - c. Continental Airlines in Houston, Cleveland and Newark.
  - d. U. S. Airways in Charlotte, Pittsburgh, Philadelphia and Rochester.
  - e. American Airlines in Dallas, San Jose, Miami and San Juan.
  - f. United Airlines in Denver, San Francisco and Chicago.
2. Their stranglehold grip on travel agents, the nation's primary system of airline ticket distribution, to an extent not seen since the Sherman Antitrust Act dealt with a similar death grip on oil distributors by the nation's oil industry over one hundred years ago.

I have been working diligently for over a year in efforts designed to bring changes to the airline industry that would benefit airline passengers. My self-published book, "Unfair At Any Fare", available via my web site at [www.countryplace.com](http://www.countryplace.com), is an attempt to define consumer-related problems in the airline industry and to suggest solutions to these problems. It was written for consumers to point out the level of unfairness with which they are treated by the nation's airlines. It was written for distributors of airline tickets to encourage them to take specific steps to become activists in voicing their consumer-related concerns with the federal government. And finally it was written for you the members of Congress to better inform you about a very complex problem, and to suggest possible solutions to the problems of an airline industry that has essentially re-regulated itself, and now needs de-regulating again, this time with consumers as well as the airlines in mind. Specifically, steps should be taken to protect new-entrant carriers, especially from predatory pricing tactics that are commonly illegal in other industries. Steps should be taken to require the big airline fraternity known as 'interline agreements' to agree to admit any FAA approved airline wishing to have an interline agreement with any other airline. Steps should be taken to investigate the entire ticket distribution process, including the big airline computer reservation systems, the airline-owned Airline Reporting Corporation payment clearing house and agency appointment authority, and all the key elements of ticket distribution which the airlines own or control and are using to eliminate the travel agency ticket distribution option for consumers. Creating new methods of ticket distribution through new technology and new options for ticket purchases by consumers is not the problem here. The problem is the deliberate and systematic elimination of an entire industry of over 25,000 small businesses, just because they give consumers a choice, and just because their elimination will improve the bottom line profits of the airlines of this nation. The consumer who calls United Airlines will never be told that Delta has a lower fare for the trip desired, or vice versa. Likewise, the consumer who chooses to visit five airline web sites will never see the comparative picture of one airline's fares versus another. And they may even fail to visit the web site of a sixth airline that happened to have the best fare for the trip needed. The two reasons that travel agents have existed over several decades still exists today, and that is to save consumers time in the process of finding the best travel arrangement,

and to save consumers money by historically being the only one point of distribution where all the airlines' fares and schedules are available on the same computer screen. Each month, a record number of travel agencies close their doors, not because that's what consumers want, but because that's what the airlines want, and they have the cartel-like controls and regulations in place to make it happen.

### **CONCLUSION:**

In closing, I realize I am only one citizen. But I sincerely believe I speak for millions of consumers, over a quarter of a million travel agents working in over 25,000 travel agencies, tens of thousands of involuntarily bumped passengers, thousands of corporations large and small that pay inflated monopolistic prices for airline tickets out of hub city markets, hundreds of small cities, and many past, present and future new-entrant carriers in seeking the intervention of the federal government to better enforce existing laws and regulations dealing with the airline industry, and in seeking the further deregulation of the airline industry by breaking down the remaining federal regulations that act as barriers to basic local consumer protection from the unfair, anticompetitive, monopolistic, anticonsumer, predatory, punitive and fraudulent practices of the nation's big airlines. And since the federal government has set itself up as the only authority in America legally able to deal with issues affecting the airline industry and its consumers and distributors, then it's up to the federal government to intervene at this time to correct the marketplace imbalance between the airlines and airline passengers and airline ticket distributors. Only then will we see a level playing field that will permit airline deregulation which was begun over twenty years ago to finally be successfully completed, and this time with the consumer more in mind which will naturally result in many more winners than losers. We need to let the marketplace have a chance to work.

Over one hundred years ago, the nation faced the dilemma of dealing with problems of monopolistic, predatory and anticompetitive practices by the oil industry that severely affected both consumers and distributors of that time. The oil industry was one of the strongest industries of that day, and wielded much influence in Washington. But the United States Congress of 1890 found the courage to deal squarely with these problems, and the result was the Sherman Antitrust Act, which we benefit from even today. Now, the 106<sup>th</sup> Congress faces an industry problem with many striking similarities to the one of 1890. I as one citizen accompanied only by the truth and a desire to help make this a better nation in which to work and live, sincerely petition the members of this committee to find the courage to act on these concerns of unfair treatment of airline passengers by the airlines, anticompetitive practices by the airlines, and an airline industry that has essentially re-regulated itself.

Respectfully submitted

Lawton Roberts  
 Author, "Unfair At Any Fare"  
 Owner, UNGLOBE Country Place Travel, Inc.  
[www.countryplace.com](http://www.countryplace.com)  
[lawton@countryplace.com](mailto:lawton@countryplace.com)

Attachment "A", pages A1-A13, letters from the Mortimer family incident